

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

RICHARD CAMPFIELD and ULTRA BOND, INC.,

Plaintiffs,

v.

SAFELITE GROUP, INC., SAFELITE SOLUTIONS LLC,
and SAFELITE FULFILLMENT, INC.,

Defendants.

Case No. 2:15-cv-2733

**AMENDED COMPLAINT
WITH JURY DEMAND**

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Plaintiffs, Richard Campfield (“Campfield”) and Ultra Bond, Inc. (collectively “Ultra Bond” or “Plaintiffs”), by and through their undersigned counsel, bring this action against Defendants Safelite Group, Inc., Safelite Solutions LLC, and Safelite Fulfillment, Inc. (collectively “Safelite”), and allege as follows based on (a) an analysis of documents produced by Safelite in this litigation including thousands of non-public internal documents; (b) personal knowledge; (c) the investigation of their counsel; and (d) information and belief.

I. OVERVIEW OF THE ACTION

1. This action seeks damages and additional relief against Safelite under Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), which prohibits, *inter alia*, any “false or misleading description of fact, or false or misleading representation of fact, which . . . in commercial advertising or promotion, misrepresents the nature characteristics, [or] qualities . . . of . . . goods, services, or commercial activities.”

2. Defendant Safelite is the country’s largest retailer of vehicle glass repair and replacement (“VGRR”) services. Safelite sells its VGRR services to individual consumers and commercial fleet customers (which are companies that own fleets of vehicles). Safelite is also the nation’s largest third party administrator (“TPA”) for processing and adjusting policyholders’ vehicle glass damage claims pursuant to the non-collision glass breakage programs of Safelite’s automobile insurance company customers. Safelite’s role as the nation’s largest TPA gives it unique access to and control over millions of individual consumers of VGRR services.

3. VGRR services are a huge business. Safelite dominates the VGRR market controlling more than [REDACTED] market share. Safelite touts that it “has more than 7,800 MobileGlassShops™ and stores in all 50 states” that “Safelite AutoGlass® is the nation’s largest provider of vehicle glass repair and replacement services” and that “Safelite Solutions manages a

network of approximately 9,000 affiliate providers”. In 2016, Safelite served over [REDACTED] customers and had annual revenues exceeding [REDACTED] and a trading profit of [REDACTED] [SL0069031-48]. Moreover, the vast majority of Safelite’s VGRR profits stem from the millions of windshields that Safelite replaces each year, rather than repairs.

4. Safelite’s entire business model for influencing the purchasing decisions by individual and commercial consumers of its windshield VGRR services has been built around one central, but literally false, premise at the heart of Safelite’s long-standing organized marketing campaign: that a windshield must be replaced if a windshield crack in it is longer the six inches.

5. Discovery in this action has revealed just how sophisticated and wide ranging Safelite’s marketing scheme is. That marketing scheme maintains Safelite’s highly profitable windshield replacement business by flooding the market with false advertisements and marketing materials that span virtually every form of media to influence customers’ decision to purchase windshield replacement (versus windshield repair) goods and services. Those materials falsely state: (i) that a windshield always requires a replacement when a crack is longer than six inches; and/or (ii) that only windshield cracks up to six inches can be repaired. Safelite often refers to this purported standard that it falsely promotes as the “six inch” or the “dollar bill” rule (since a dollar bill is about six inches long).

6. Safelite’s internal documents demonstrate that Safelite knows there is no scientific basis for stating that the cutoff for safe repair of windshield cracks must follow the “six inch” or “dollar bill” rule, thereby rendering their statements in their marketing and advertising materials literally false. In fact, Safelite’s documents demonstrate that windshield cracks up to even 24 inches can be safely repaired.

7. For decades prior to 2007, there were no industry standards governing the length of a windshield crack that could be safely repaired. Safelite's early marketing slogan was, "if it fits under a buck, send the little red truck," meaning Safelite's Repair Medic vehicle. Safelite's internal documents reveal that since the late 1990s, Safelite used its market power and "expertise" to convince its automobile insurance company clients and other consumers of windshield replacement or repair services that the six inch rule was the upper limit for a "safe" windshield repair and that windshield cracks exceeding six inches required a replacement windshield.

8. Any conceivable support for Safelite's position regarding the upper limit for a safe repair vanished on June 20, 2007. Following more than two years of deliberation and study by a committee formed by the two leading VGRR industry associations (the National Glass Association and the National Windshield Repair Association), the American National Standards Institute ("ANSI") approved industry standards for windshield repair and replacement, entitled the "Repair of Laminated Automotive Glass Standards" ("ROLAGS"). The ROLAGS established, *inter alia*, that windshield cracks up to and including 14 inches are repairable.

9. Safelite's designated representatives to the aforementioned committee were windshield repair specialists, not high level executives at Safelite focused on the financial implications of the ROLAGS. As members of the committee that developed these standards, they *expressly approved* the windshield repair standard in the ROLAGS. They made a determination based on evidence, not based on the financial implications for Safelite's business model. That Safelite's representatives proceeded as they did is not surprising. Safelite's internal documents show that Safelite knew that the repair of windshield cracks "up to 24 [inches] . . . can be safe and is viable." [SL0009620-23]. Further, Safelite's internal documents show that Safelite knows

that it is often preferable to the consumer (but not to Safelite) from both cost and safety standpoints to repair the windshield as opposed to replacing. And this holds true even if the windshield crack is over six inches in length.

10. Within a month of ANSI's approving the ROLAGS, Safelite was acquired by Belgium-based Belron, S.A. ("Belron"), one of the world's largest providers of VGRR services. Discovery in this action has revealed that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

11. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

12. On the other hand, internal documents by these executives also showed that they recognized [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[SL0055743-48].

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [SL0006939-40].

14. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. Thus, decreasing the repairable crack length from six inches would have little effect on the number of Safelite replacements, but would negatively impact Safelite's profits due to the unique nature of the [REDACTED] and [REDACTED] contract terms in Safelite's contracts with its insurance company customers. However, increasing the repairable crack length from 6 to 14 inches in accordance with the ROLAGS would result in dramatically fewer windshield replacements because the majority of windshield cracks fell within that range. That would significantly impact Safelite's bottom line. Safelite's internal documents reflect that as of March 2012, its "average margin" on a windshield replacement was [REDACTED] versus only [REDACTED] for a repair. That is almost a [REDACTED] difference in profit. [SL0011508-09].

16. Thus, Safelite decided to not only ignore the ROLAGS with its 14 inch standard for windshield repair, but it doubled down and increased its promotion of the fictitious "dollar bill" or "six inch" rule as a universal cutoff for safe repair of windshield cracks.

[REDACTED]

17. Safelite spreads its literal falsehood about the six inch or dollar bill rule not only in its own advertisements to individual consumers about VGRR services and but also in marketing content that Safelite drafts and provides to third parties to disseminate to consumers. This includes brochures, bulletins and website content under the guise of the third party -- often *without attribution to Safelite*. Safelite's deceptive advertising through third parties is designed by Safelite to further mislead individual consumers of VGRR services to believe that a windshield crack of six inches is a *universal cutoff* for safe windshield repairs. These third parties include insurance companies with whom Safelite has contracts, commercial vehicle fleet operators (like car rental companies), and organizations that serve consumers, like the 50 million member American Automobile Association ("AAA").

18. As reflected in an April 21, 2011 PowerPoint Presentation entitled "How Marketing supports our Glass Programs" prepared by Safelite's Marketing Director and its B2B Marketing Manager, Safelite disguises its marketing materials generically as "educational" content with such topics as: "Educate on what to look for in reputable vehicle glass service providers[;] Inform why high pressure, windshield bully tactics are bad[; and] Most windshield damage up to six inches can be repaired." [SL0082417-36] (Emphasis added).

19. Safelite characterizes these fictitious educational efforts as a way to "[e]ducate agencies on industry, glass program and Safelite AutoGlass value-added information." [*Id.*] (Emphasis added). Safelite also "[t]each[es] Agent Continuing Education (ACE) classes" incorporating the false "six inch" or dollar bill" rule. [*Id.*]

20. Safelite distributes this "content" to "educate", *inter alia*, consumers, insurance companies, and tens of thousands of insurance agents with the false message that only "windshield damage up to six inches can be repaired." Safelite portrays this "education[al] . . .

content” regarding the six inch or dollar bill rule as an objective universal standard governing the cutoff crack length for safe windshield repair. Notably, Safelite’s Media Director characterized the distinction between “content and advertising” in an August 2010 email as “crossing the church and state . . . line.” [SL0009745-48].

21. Safelite even offered courses like “Windshield Repair . . . Continuing Education Course for Property and Casualty Insurance Agents and Staff” and “Agent Continuing Education Course: Controlling Vehicle Glass Losses” to indoctrinate insurance companies and their agents about the false “dollar bill” or “six inch” rule. [SL0005255-5293] & [SL0008139-203].

22. Safelite uses these third parties as their conscripted agents to parrot to potential individual consumers of its VGRR services Safelite’s own false messaging about the “six inch” or “dollar bill” rule. The third parties oblige because Safelite falsely tells them that, based on Safelite’s expertise and internal studies, it is not safe to repair windshield cracks longer than six inches.

23. A PowerPoint slide from a February 2009 Belron US (which includes Safelite) presentation illustrates Safelite’s singular focus on maintaining the false “dollar bill” rule as a universal standard for safe windshield repair that cuts across *all* of its advertising and marketing materials and is directed to *all* Safelite employees who interact with consumers:

Repair Selling Points
Repair Qualification

- **The Most Important Aspect of Our Repair Commitment**
 - **“CAN YOU COVER THE DAMAGE WITH A DOLLAR BILL”**
 - Message must be consistent
 - Starts with the agents and their staff
 - Call centers

□ Repairing Associates

[SL0007254-78].

24. Further, as an integral part of Safelite's false advertising campaign, Safelite's documents show that Safelite instructs all employees to falsely tell individual consumers, insurance companies, and other third parties that serve potential Safelite customers, that it is not safe to repair a windshield with a crack longer than six inches. For example, an internal Safelite PowerPoint presentation dated November 1, 2011 instructs that:

Technicians/Repair Specialists, SR's [service representatives], Services Managers and Retention Specialists recognize these instances [where cracks are longer than six inches] as replacement opportunities, as a replacement [is] the only option for insuring the structural integrity of the windshield within the vehicle's overall safety features.

[SL0055880-906 at slide 20] (Emphasis in original).

25. Safelite's literally false statements have misled, and continue to mislead, millions of individual consumers who replace damaged windshields that could have been repaired. In most instances, these individual consumers foot the bill for these unnecessary windshield replacements. They pay for the replacement out of pocket either because they don't have insurance coverage for glass breakage, because the deductible on their insurance policy (if they have insurance) is normally not waived in that circumstance, or simply because they do not wish to report a claim to their insurer that might potentially increase future premiums.

26. Safelite's deceptive advertising, which is intended to maximize the number of unnecessary windshield replacements it performs, harms individual consumers in at least two ways. First, consumers pay more than they otherwise would if they were not misled into believing that less expensive windshield repair cannot be performed on cracks larger than the size of a dollar bill. At the same time, Safelite profits handsomely from this deception, raking in

hundreds of millions of dollars in ill-gotten profits. Second, Safelite's actions put consumers at risk of greater injury in the event of a crash. Safelite's internal documents reflect that it knows that unnecessarily replacing a windshield, as opposed to simply repairing the factory installed windshield whenever possible, makes vehicles less safe in a car crash. Nonetheless, Safelite puts its hundreds of millions in profits ahead of people.

27. Plaintiff Richard Campfield, the founder of Ultra Bond, is an inventor who has been actively involved in the windshield repair and replacement industry since 1986. Campfield is a founder and past President of the National Windshield Repair Association. Together, he and Plaintiff Ultra Bond hold (or have held) several patents related to the repair of windshield cracks longer than six inches. The cracks are referred to in the VGRR industry as "long cracks" ("Long Cracks"). Campfield's techniques and resins (for which he received patents) are sold and used worldwide to safely repair windshield cracks that are much longer than six inches while costing hundreds of dollars less than a windshield replacement.

28. Safelite's unlawful conduct in falsely stating that windshield cracks over six inches are not repairable under any circumstances has directly damaged the businesses of Plaintiffs, who are competitors of Defendants, and who sell products that safely repair windshield cracks longer than six inches.

29. Plaintiffs seek relief under the Lanham Act for the damages they sustained including, but not limited to, lost profits, disgorgement of Safelite's inequitable profits, other available equitable relief, and injunctive relief to prevent Safelite from continuing to make false and misleading statements that windshield cracks can be repaired *only* if the crack is less than the size of a dollar bill (or six inches in length) or conversely, that a windshield must *always* be replaced if the crack is longer than a dollar bill or six inches. Both statements contradict (a) the

ROLAGS (approved by Safelite), which establish that a windshield crack up to 14 inches long can be safely repaired; and (b) Safelite's own internal conclusions. In addition, given the breadth of Safelite's deceptive and ubiquitous marketing campaign, which has infected the marketplace with the false belief that windshield cracks over six inches in length are *never* repairable, Plaintiffs seek injunctive relief requiring Safelite to issue corrective disclosures, consistent with the ROLAGS and what Safelite knows internally to be true, to address the harm caused to Plaintiffs' business and consumers.

II. PARTIES

30. Plaintiff Ultra Bond, Inc., is a California corporation, which has its principal place of business in Grand Junction, Colorado. Ultra Bond, Inc., is a windshield repair manufacturer that both licenses and sells its products to auto-glass shops and related-businesses across the country in order for them to be able to perform Long Crack repairs consistent with the ROLAGS. These shops and businesses, who are customers of Ultra Bond, Inc., compete to provide VGRR services to both individual and insurance customers.

31. Ultra Bond, Inc., sells repair kits consisting of specialized tools, specially manufactured resins, primers, additives, and pre-treatment chemicals used for repairing (versus replacing) windshields damaged by Long Cracks. Additionally, Ultra Bond, Inc., sells stand-alone resins to re-supply its customers. (The tools, resins, and chemicals can also be used for repair of cracks under six inches).

32. The tools and resins manufactured and sold by Ultra Bond, Inc., are geared to be utilized with unique methods developed and patented by Mr. Campfield. Independent testing has confirmed the effectiveness of the Ultra Bond method for repairing windshields with Long Cracks. Upon information and belief, Ultra Bond is the dominant provider of Long Crack repair

products and services holding between 50-75% of the U.S. market for Long Crack repair products.

33. Plaintiff Richard Campfield (“Campfield”) is a citizen of Pennsylvania, and 100% stockholder of Ultra Bond, Inc., and the sole proprietor of a number of additional businesses that, in conjunction with the equipment and resins sold by Ultra Bond, Inc., sell licenses related to certain patented elements of the Ultra Bond Long Crack repair process. Those additional businesses are Ultra Bond Licensing and a retail glass repair and replacement business doing business as Ultra Bond Windshield Repair and Replacement in Grand Junction, Colorado. In addition, Campfield has expanded his retail repair business into the Northeastern Pennsylvania region.

34. On July 1, 2015, Campfield completed a two-and-one-half year term as the President of the National Windshield Repair Association (“NWRA”) (which is an organization whose members consist of vehicle glass repair shops from across the country).

35. Defendant Safelite Group (“Safelite”) is a Delaware Corporation with its principal place of business in Columbus, Ohio. Safelite Group is a multi-faceted automobile glass and claims management service organization that is (or has been) composed of four major operations: (1) Safelite Fulfillment, Inc. (operating under the name Safelite AutoGlass®), which provides VGRR services (such as windshield replacement and repair) to consumers; (2) Service Auto Glass, which provides wholesaler vehicle glass and vehicle glass-related products; (3) Safelite Solutions LLC, which serves as a third party administrator and provides complete claims management solutions for the nation's leading fleet and insurance companies; and (4) Safelite Glass Corp., which (until recently) manufactured aftermarket windshields. Safelite Group is a

subsidiary of Belron S.A., which is the world's dominant provider of auto glass repair and replacement services, operating globally in over 30 countries across five continents.

36. Defendant Safelite Solutions LLC ("Safelite Solutions") is a Delaware limited liability company with its headquarters in Columbus, Ohio. Among other services, Safelite Solutions processes automobile glass claims for its insurance company customers as a third party administrator. Upon information and belief, Safelite Solutions currently serves as a third-party administrator of auto glass claims for more than 175 insurance and fleet companies, including a majority of the top property and casualty insurance companies in the country.

37. Defendant Safelite Fulfillment is a Delaware Corporation with its principal place of business in Columbus, Ohio. Safelite Fulfillment is the largest retail VGRR organization in the United States, operating under the trade name Safelite AutoGlass®. Safelite Fulfillment operates in all 50 states, and is available to more than 95% of all drivers. Safelite Fulfillment serves more than 6 million consumers each year, and it has over 720 locations.

38. During all times relevant hereto, Safelite has operated, and continues to operate, a website which allows individual consumers of its VGRR services to schedule on-line services, either for windshield replacement or repair, to be performed by a Safelite technician. As set forth below, that website has contained embedded videos and/or textual statements that were literally false advertisements about the size of repairable windshield damage.

39. In addition to its website, Safelite has operated, and continues to operate, multiple national call centers, that are staffed 24/7 by customer service representatives who are trained to handle calls from individual consumers of its VGRR services (including calls made by individual consumers to Safelite Solutions' insurance company clients to report windshield damage claims) who have questions about when to perform either windshield repair or

replacement and who also want to schedule a Safelite technician to perform either of those services. These national call centers are staffed 24 hours a day, 365 days a year, seat approximately 2,000 customer service representatives in total, and handle more than 15 million customer calls on average each year. [SL0000079-80].

40. As set forth below, these 2000 Safelite customer service representatives and Safelite technicians (of whom there are now about 6000) are all trained by Safelite to tell individual consumers, with whom they interact at the point-of-sale in real time, the same literally false information about the size of repairable windshield damage as that which Safelite has likewise falsely advertised in multiple forms of media, including the embedded videos and/or textual statements on its website, to influence individual consumers' purchasing decisions about its VGRR services.

41. There are generally only two means by which individual consumers of Safelite VGRR services book appointments: either by scheduling the work themselves on-line through Safelite's website, or, by calling its dedicated army of customer service representatives. Moreover, documents produced by Safelite in response to document requests show that in 2016 roughly [REDACTED] of Safelite's profits from the sale of its windshield replacements services came from on-line website scheduling and the remainder came from calls to customer service representatives. *See* [SL0084639-40].

III. JURISDICTION AND VENUE

42. This Court has proper subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331. In addition, this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because there is diversity of citizenship between Plaintiffs and Defendants and the amount in controversy exceeds \$75,000.00.

43. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, *et seq.*, because Defendants are located in this District, Defendants' contacts are sufficient to subject them to personal jurisdiction in this District, and the acts giving rise to the claims at issue in this lawsuit occurred, among other places, in this District.

IV. FACTUAL ALLEGATIONS

A. Windshield Repair and Plaintiffs' Patented Technology

44. By far, the highest percentage of all vehicle glass damage occurs to windshields as opposed to side or back window vehicle glass. Further, damage to windshields is one of the leading, if not the leading, cause of automotive insurance claims in the United States. Windshield breakage in the situation of non-collision glass damage typically consists of a chip or crack caused by a flying stone flicking up from a roadway and striking the vehicle's front window.

45. Windshields -- unlike side and back window vehicle glass -- are made of two sheaths of safety glass that are designed to offer optimum safety by being sandwiched around an inner plastic (polyvinyl butyral, or PVB) film that acts as a barrier either to prevent passenger ejection from a vehicle in the case of a crash and to prevent passenger injury from an object penetrating the windshield when being driven.

46. A vehicle's original factory sealed windshield glass (referred to as "original equipment manufactured" or "OEM" glass) is also an integral part of a vehicle's overall passenger safety system. Among other things, a factory sealed windshield is part of a vehicle's airbag crash pulse system and serves as an airbag backboard, which are both necessary for proper deployment of airbags in the event of a collision. A factory sealed windshield also provides up to 60% of the roof's support and serves as part of the vehicle's structural system to prevent roof collapse in the event of a rollover crash. In fact, a Safelite Windshield Safety Video states that, "after your seatbelt and airbags what do you think is the next most important safety feature on

your vehicle? Your brakes, your tires, . . . In fact, the answer is right before your eyes, your windshield. . . .”

47. When a vehicle windshield is damaged, three options exist: a) replacing the entire windshield, b) repairing the damage without replacing the windshield, or c) leaving the damage as is. Leaving the damage as is can be extremely dangerous because if left untreated, windshield damage will eventually spread and cause the inner PVB film to be exposed to atmospheric conditions, which in turn degrade the film’s strength as an effective barrier to prevent passenger ejection or object penetration. Untreated windshield damage can quickly compromise the structural integrity of a vehicle’s windshield and risk the safety of vehicle occupants.

48. It had been historically believed since the beginning of the windshield repair industry in the 1970s that repair of windshield cracks longer than six inches was infeasible. In the VGRR industry, this arbitrary rule of thumb was always that a damaged windshield had to be replaced (and could not be repaired) if the damage was longer than six inches. This eventually became colloquialized in the industry as the size of a “dollar bill” rule. For years, Safelite used this standard as its marketing slogan “if it fits under a buck, send the little red truck.” The red truck was Safelite’s repair technician vehicle (what is now its MobileGlassShops).

49. There was no inherent scientific basis for this dollar bill rule -- it was simply a catchy marketing technique that was ingrained in Safelite’s business model and in its contracts with insurance carriers.

50. However, in 1989, Plaintiff Campfield invented groundbreaking repair theories and technologies that debunked the “six inch rule” and allowed any automotive glass repair technician to repair all cracks regardless of length (only using the proper method, tools, and resins).

51. Specifically, Campfield and/or Ultra Bond hold (or have held) several patents that cover (or have covered) methods of repairing windshield cracks longer than six inches, the tools to be utilized when repairing these cracks, and the specific viscosities of chemical resins which are suitable for repairing windshield cracks longer than six inches.

52. The method originally developed by Campfield is known as the “Ultra Bond” process, which uses Campfield’s invention of a previously unutilized “multi-viscosity” resin method.

53. As more fully outlined in United States Patent 5,116,441 (the “441” Patent), 5,425,827 (the “827” Patent), and 5,429,692 (the “692” Patent) issued between May 26, 1992 and July 4, 1995, the Ultra Bond process involves using a series of specialized tools and multi-viscosity resins to repair windshield cracks longer than six inches, i.e. a Long Crack. *See* Exhibit A (collectively the “1990s Patents”).

54. The 1990s Patents have expired but, in September 2012, Campfield was awarded United States Patent 8,268,104 (the “2012 Patent”) which employs a method of using UV cationic epoxy to repair cracks and breaks in windshields. The UV cationic epoxy method is even easier to use by eliminating oxygen inhibition, shrinkage and dark cures after any exposure to UV. *See* Exhibit B.

55. Competitors have acknowledged that the Ultra Bond method of using multiple viscosities to safely repair windshield cracks longer than six inches (i.e. Long Cracks) as covered by the 1990s Patents is effective: Paul Syfko, an executive with Glass Medic, which is a Belron-owned sister company of Safelite that markets and sells Belron’s Glass Medic repair system (the repair system used by Safelite) has acknowledged in sworn deposition testimony that Glass Medic has told people looking to fix longer cracks that they should use multiple viscosities

(which was covered under the 1990s Patents) to fix windshield cracks longer than six inches. *See* Exhibit C (exhibit highlighted in relevant part). As discussed above, Safelite's internal documents also reflect that windshield cracks up to 24 inches can be safely repaired.

56. The effectiveness of the Ultra Bond method is proven. Testing has shown that windshields with Long Cracks that have been repaired using the Ultra Bond tools and repair process pass the same visual and structural integrity tests (Federal Motor Vehicle Safety Standard 205 (American National Standards Institute ("ANSI") Z.26.1)) as new OEM windshields, and also satisfy the ROLAGS crack resin test protocol. In fact, they have been tested to be as strong as new OEM windshields. Additionally, the historical rates of customer satisfaction, as judged by warranty claims and customer complaints, is over 99% for windshields repaired using the Ultra Bond method. The improved Long Crack repair method covered by the 2012 Patent is even easier to use than the methods covered by the 1990s Patents.

B. The ROLAGS Established The Industry Standard That Windshield Cracks Up to 14 Inches Can Be Safely Repaired

57. By 2005, repair and replacement practitioners knew (but the public did not) that windshield repair technology had advanced to the stage where it was often more safe and reliable than windshield replacement. Accordingly, the stage was set for discussion by a variety of interested industry participants (in the form of a ROLAGS Standards Development Committee jointly sponsored by the National Glass Association and the National Windshield Repair Association) about when Long Crack repair (and windshield repair more generally) was advisable. Standards on this subject were needed for a variety of reasons, including to establish industry norms and to enhance customer knowledge.

58. The Standards Development Committee for ROLAGS included Safelite Fulfillment's National Repair Development Manager, David Erwin ("Erwin"), as well as Paul

Syfko, of Glass Medic America/Belron (“Syfko”). *See* Exhibit D Foreword at p. iii (exhibit highlighted in relevant part).

59. After more than two years of study and debate, the jointly established Standards Development Committee for ROLAGS (which again included both Erwin and Syfko) voted unanimously 16 to 0 on February 13, 2007 to approve the ROLAGS, including its 14 inch repair standard. [SL0004978-80]. During its deliberations, the ROLAGS Standards Development Committee researched other international windshield repair standards and testing used in connection with the conclusions that supported those countries’ standards. [NGA00000203-12]. Ultimately, the 14-inch standard was adopted by the Standards Development Committee to track the Australian/New Zealand standard of 13.78 inches. [*Id.*] Among other things, no compelling scientific evidence was presented that there was any safety mandated maximum length for windshield repairs. [*Id.*]

60. As stated above, on June 20, 2007, the American National Standards Institute subsequently approved the ROLAGS standard jointly developed by the National Glass Association and the National Windshield Repair Association. These industry standards established that windshield cracks up to and including 14 inches are repairable. *See* Exhibit D at p. 4 (exhibit highlighted in relevant part).

61. ROLAGS represents the auto glass industry’s statement of best practices as compiled under ANSI guidelines, by a committee of windshield repair system manufacturers, auto glass manufacturers, windshield repair and replacement retail practitioners, the three auto glass trade associations and other interested parties.

62. The 2007 standards expressly dictate that the intention of the ROLAGS committee was that the standards be used “to consistently evaluate damages on laminated auto

glass in order to aid in the decision to repair or replace the glass.” They furthermore state that the “Scope of th[e] standard shall be to define: Repairable damages[.]” Exhibit D at p. 1.

63. On February 11, 2014, the American National Standards Institute approved an updated version of ROLAGS that again established that cracks up to and including 14 inches can be repaired. *See* Exhibit E at p. 4 (exhibit highlighted in relevant part).

64. Safelite’s literally false advertising about the six inch or dollar bill rule not only continued without correction after the initial approval of ROLAGS by the American National Standards Institute on June 20, 2007, but it has also persisted without abatement even after the updated approval of ROLAGS by the American National Standards Institute on February 11, 2014.

C. Safelite Knows That The Benefits Of Repairing A Cracked Windshield Do Not End At Six Inches

65. Safelite admits that windshield repair -- not windshield replacement -- is, in most instances, the most preferable option *for the consumer* for both cost and safety reasons. For example, an August 2, 2011 internal Safelite PowerPoint slide presentation states, without reference to the “six inch” or dollar bill” rule, *inter alia*, that:

Windshield repair benefit #1: Safe & effective

- Can restore windshield’s structural integrity
 - One of the most important structural reinforcement components of a vehicle in the event of crash or rollover
 - When performed by well-trained, certified technician using quality tools and resins
- Will prevent chip or crack from spreading in more than 95% of cases
- Does not compromise original factory seal

Windshield repair benefit #2: Quick and convenient

- Only takes about 30 minutes to complete
- Immediate drive-away time
 - Up to 48 hours for windshield replacements with some vehicle glass companies that use long-curing urethane
- Vehicle glass companies should offer mobile service for policyholder convenience

Windshield repair benefit #3: Cost-effective

- Only takes about 30 minutes to complete
- Most insurance companies cover cost of windshield repair for policyholders with comprehensive coverage = no cost to policyholder
- [REDACTED]
- Repairing before damage spreads prevents potential future need for full replacement

[SL0008415-36] (Emphasis in original).

66. Indeed, in its brochure to businesses and companies that serve consumers entitled, **“Improving your view: ‘How to Perform a Proper Repair’,”** Safelite states, *inter alia*, **“Some things a reputable vehicle glass company should not do during the repair process. . . Insist on windshield replacement when repair is a safe, effective solutions (sic).”** [SL0008022-23] (Emphasis in original).

67. Another Safelite training presentation for Safelite’s CSRs, Repair Specialists, and Technicians makes the same point about not performing unnecessary windshield replacements, stating in relevant part :

“Would you go buy a new car if you had a scratch? Of course not, so why replace your windshield when it could be REPAIRED!”

[SL0001131-69, at 34] (Emphasis in original).

68. Most people do not know what Safelite knows about the importance of doing repair whenever possible strictly from a “safety-first” point of view. When a windshield is

repaired, it will be repaired without removing or destroying the “factory seal” -- which is, as previously stated, the bonding of an original equipment manufactured windshield onto a new vehicle during assembly at the factory. Safelite’s internal documents show that “[t]he factory seal is considered optimal because of the quality and environmental controls present in the factory setting.” [SL0004678-80]. In Safelite’s own words, “nothing can duplicate the factory seal of the original windshield.” [SL0004312-72]. Moreover, Safelite knows that besides avoiding the necessity of breaking the factory windshield seal by opting for repair over replacement, the repaired area will be twice as strong as the rest of the windshield. [SL0004312-72].

D. Safelite Uses Its Market Dominance To Falsely “Define What Can Be Repaired vs. Not Repaired” And To Spread the Misrepresentation That Six Inches Is The Cutoff Length For Safe Windshield Crack Repair

69. As previously stated, Safelite has three primary categories of customers: insurance company clients for whom it serves as the third party administrator of their glass breakage coverage programs; commercial customers (such as businesses or governmental agencies who operate fleets of vehicles); and individual consumers (who may or may not have insurance that covers windshield damage or even decide to use it assuming they do).

70. Safelite states that “[w]ith more than 7,800 MobileGlassShops™ and stores in all 50 states, Safelite AutoGlass® is the nation’s largest provider of vehicle glass repair and replacement services.” Safelite’s internal documents reveal that, as of 2011, Safelite: [REDACTED] (ii) had contracts with 23 of the “Top 30 Insurance Companies” in the U.S. to provide “claims management” services with “direct electronic access to insurance company databases”; and (iii) in addition to its own branded shops, had “an affiliated network of 10,000 independent glass providers. [SL0063247-89].

71. Safelite has long used its dominant market position to flood the VGRR market through false advertisements and marketing materials with the false notion that six inches is a

universal cutoff for safe windshield repair. Safelite also directly misinforms its insurance company customers about the viability of repairing cracks longer than six inches, and uses insurance companies and their agents as a pass-through to potential Safelite consumers, by falsely telling insurers that it is not possible to repair windshield cracks longer than six inches and then also having them parrot the false “six inch” or “dollar bill” rule to their policyholders through advertising and marketing content provided by Safelite.

72. Indeed, while discussing the “long term preservation of our replacement business,” Safelite executives admitted in an internal email chain dated December 19-20, 2012 how “[o]ver the last 15 years, Safelite has helped the insurance industry define what can be repaired vs. not repaired” and further, that Safelite had the market power “to move the [repair] standard in the insurance industry.” [SL0080494-99] (Emphasis added).

73. This admission is not surprising. Safelite inundated insurance companies and their agents with “bulletins” and “continuing education” courses like “Windshield Repair . . . Continuing Education Course for Property and Casualty Insurance Agents and Staff” and “Agent Continuing Education Course: Controlling Vehicle Glass Losses,” which Safelite used to indoctrinate insurance companies about the false “dollar bill” or “six inch” rule.

74. Indeed, as reflected in other Safelite internal documents like Safelite’s “2010 Media Plan and P&L Impact” analysis relating to a Senior Leadership Team meeting show that Safelite sought to “educat[e] the market”. *See* [SL0043334-35] (also stating that Safelite “saw spikes in sales and opportunities from educating the market.”); *see also* [SL0065955-56] (Safelite TV ads are “educating the consumer about the option of repair vs replacement.”). In other words, Safelite markets the six inch or dollar bill rule under the guise of “education” to reinforce the false notion that this rule is a universal cutoff for safe windshield repair.

75. When insurance companies began to ask Safelite about the ROLAGS, Safelite falsely told them that Safelite had disagreed with the 14 inch repair standard and that it was not safe to repair a windshield with a crack longer than six inches. [REDACTED]

[REDACTED] Safelite “had made it clear to insurance companies that it is not going to change its repairable dimensions to include crack repair [in accordance with ROLAGS] until we research the safety implications. [REDACTED]

[REDACTED] [SL0084201] (Emphasis added).

76. The true reason that Safelite did not want to change the “six inch” or “dollar bill” rule had nothing to do with “safety,” which is what Safelite falsely told insurance companies (and others). Indeed, Safelite’s Media Director stated in an internal email dated July 2, 2008, that David Erwin, Safelite’s representative on the ROLAGS Standards Development Committee, told him that “up to 24 [inches] [crack] repair can be safe and is viable.” [SL0009620-23].

77. Safelite continued this deception for years. For example, in August 2011, a major Safelite client, [REDACTED] a publicly traded company on the NYSE that provides professional vehicle fleet management services, asked its Safelite representative whether its Certification Standards Brochure could add a statement that it was ROLAGS compliant. Safelite marketing executives and Erwin exchanged multiple emails on this issue. Safelite’s PR Manager stated that “I guess the other opportunity we have is to educate clients on why ROLAGS is an outdated standard. . . .” (Emphasis added). The PR Manager also stated that:

Dave [Erwin] gave me a call with his background on this matter . . . He says ROLAGS is irrelevant. The standard is flawed and it was agreed upon by company leaders during the Tuscon NLM that we don’t want to be a part of it.

* * *

However, Dave feels comfortable saying something like Safelite's Safetech™ certification aligns with and exceeds industry standards including ROLAGS with the exception of ROLAGS recommendation to repair cracks up to 14 inches, which Safelite's research indicates is not safe. Therefore, Safelite limits repairs to cracks 6 inches or less.

[SL0008478-84] (Emphasis added).

78. In truth, Safelite's research did not indicate the ROLAGS repair standard was unsafe. For example, in direct contrast to the underscored statement above, in April 2011, Erwin stated in an email to Belron executives that it *was safe* to repair windshield cracks up to 14 inches in accordance with the ROLAGS. Specifically, Erwin stated: "The new Belron proposed standard has very little in common with the present ANSI/ROLAGS standard. The ROLAGS Standard presently allows cracks up to 14 inches and does not discriminate where a repair can or can not [sic] be done on the windshield. While there was much debate on these final qualifications, since there was no known published studies or data showing that any of these repairs were unsafe, ultimately it was decided not to eliminate these types of repair."

[SL0080669-74] (Emphasis added).

79. Safelite's "safety" excuse was again simply a ruse to cover up the facts that: (i) it was too difficult for Safelite to change from the "six inch" or "dollar bill" rule in light of, *inter alia*, the long-standing [REDACTED] and [REDACTED] provisions in Safelite's contracts with its insurance company customers, discussed above; and (ii) moving to a 14 inch standard (which Safelite knew to be safe) would dramatically slash hundreds of millions of dollars in profits made from performing windshield replacements.

E. Safelite Falsely Advertises Across the Entire Media Spectrum That Six Inches Is A Universal Cutoff For Safe Windshield Crack Repair

80. As discussed above, Safelite's entire business model for influencing the purchasing decisions of individual consumers as well as other business customers of its

windshield replacement goods and services has long been based on the false “six inch” or “dollar bill” rule. That business model would go down the drain, and hundreds of millions of dollars in yearly profits were at risk, if individual consumers knew what Safelite knew to be true, i.e. that windshield cracks longer than six inches (which make up the vast majority of windshield cracks) can likely be repaired.

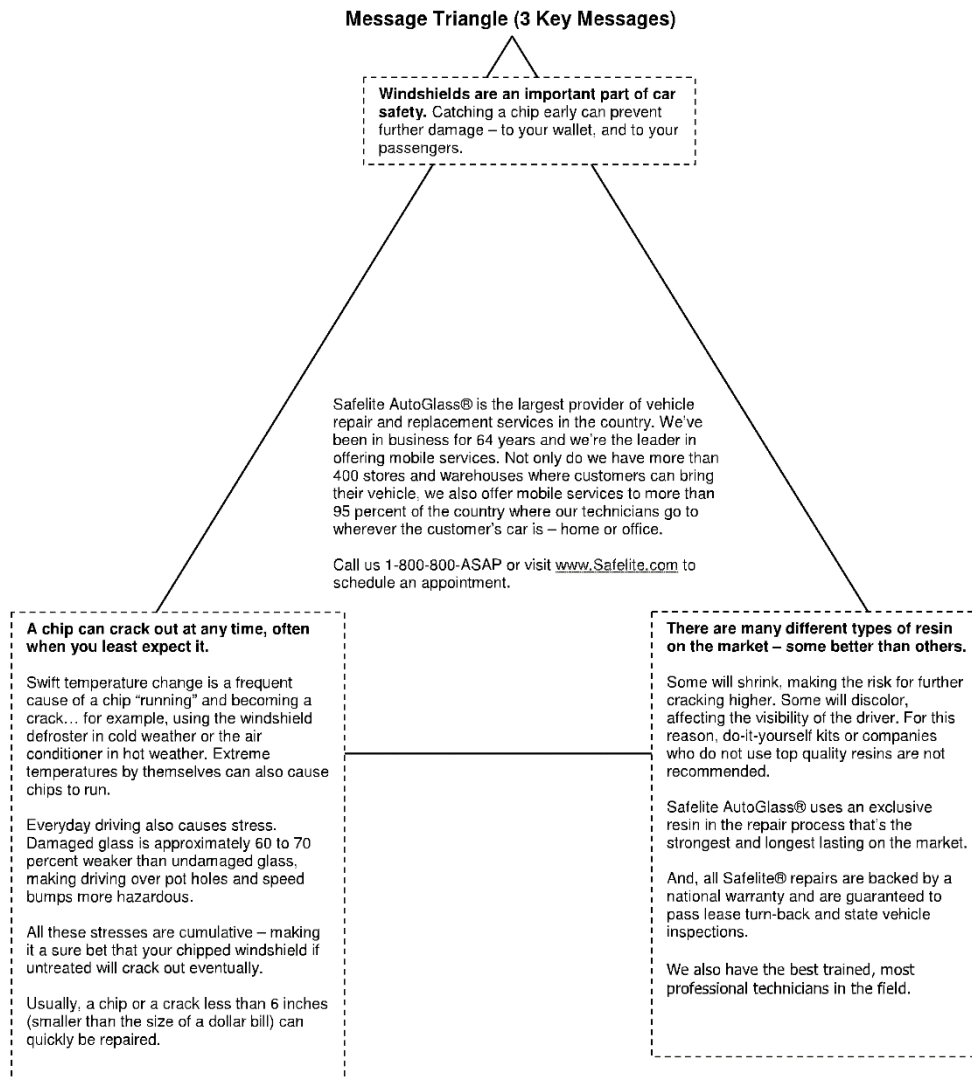
81. Thus, after the ROLAGS was approved in 2007, Safelite used its huge market share and annual advertising budgets of over [REDACTED] a year [SL0063247-89] to continue to promote the “dollar bill” and/or “six inch” rules as a universally accepted standard. Safelite implemented an organized marketing campaign across virtually all forms of media under its own name, and also through third parties (such as insurance carriers and the AAA) using advertising materials that Safelite created for those third parties to distribute to consumers. As shown below, these third party materials often advertised the “six inch” or “dollar bill” rule without any attribution to Safelite.

82. Falsely portraying the “dollar bill” or “six inch” rule as a universal cutoff crack length for safe windshield repair -- as opposed to a Safelite-specific standard -- is an intentional decision that starts from the top executive level. For example, a Safelite internal document shows that Safelite conducts “Media Training” for its Senior Leadership Team” as well as its district managers and general managers using “Messaging Triangles” and “one-on-one practice interviews on camera.” [SL0000076]. As shown below, one such messaging triangle, “Windshield Repair Advantages” states: “Windshields are an important part of car safety” and “Usually a chip or crack less than 6 inches (smaller than the size of a dollar bill) can quickly be repaired.” [SL0000077-78]. This affirmative statement of fact is false because it denotes that any windshield damage greater than the size of a dollar bill can never be repaired and must be

replaced -- a misrepresentation Safelite also repeatedly states in its marketing materials and its training materials for its personal to falsely disseminate.

Messaging

Windshield Repair Advantages
Final Draft: November 2, 2011



83. Safelite also provides “supporting facts” for the Messaging Triangle. [SL0000077-78 at 78]. One such “supporting fact” is: “When a chip is smaller than a dollar bill, it can usually be repaired without replacing the windshield.” Again, this affirmative statement of fact is literally false because it denotes that any windshield damage greater than the size of a

dollar bill can never be repaired and must be replaced. Safelite represents this six inch cutoff as an accepted general fact even though Safelite knows it to be false. As discussed above, Safelite admits internally that windshield cracks longer than a dollar bill or six inches can be safely repaired.

84. Discovery has revealed how Safelite floods the market with oral statements and written advertising and/or marketing materials conveying the false belief that: (i) a windshield always requires a replacement when a crack is longer than six inches; and/or (ii) only windshield cracks up to six inches can be repaired. These forms of advertising including, among other things:

- Safelite's website which includes written text and oral statements in videos posted on the website;
- Videos posted on YouTube;
- Point of Sale oral communications;
- Safelite brochures containing pictures of dollar bills or 6 inch-long rulers, which also refer customers to Safelite's website;
- Brochures and bulletins drafted by Safelite for insurers and other third parties (like the 50 million member AAA) to distribute to their agents and consumers;
- Websites of insurers and other third parties (like the AAA) for which Safelite provides the marketing content; and
- Interviews, TV, radio spots, and press releases.

1. Safelite's Misrepresentations on its Website

85. Safelite's website is a powerful tool, not just for marketing Safelite's services, but actually for signing up customers for repair and replacement appointments. According to documentation produced in this litigation (in response to document requests) in 2016 alone Safelite sold over [REDACTED] in replacement windshields via its websites. *See* [SL0084639-40].

For extended periods of time, Safelite's website has been replete with false affirmative misrepresentations of fact, in both textual and video format, that only windshield cracks up to six inches can be safely repaired and/or that longer cracks require that the windshield be replaced.

86. For example, Safelite's website has included affirmative textual statements falsely stating (against the guidance of the ROLAGS Standard and what Safelite acknowledges internally) that, "Your windshield helps keep you safe. **If the damage is larger than 6"**, it cannot be repaired. You need a replacement." (emphasis supplied in original on-line text).

Glass Damage - Safelite AutoGlass®

<https://fixmyglass.safelite.com/External/GlassDamage.aspx>

Safelite AutoGlass® (<http://www.safelite.com>)

My damage 20%

Replace my windshield >>



<http://www.youtube.com/embed/iSqxxPENHy8?enablejsapi=1&autoplay=1&rel=0>

Does my glass need replacing?

Your windshield helps keep you safe. **If the damage is larger than 6"**, it cannot be repaired. You need a replacement.

Replace

Repair my windshield >>



<http://www.youtube.com/embed/Ev2MEoXmz2Q?enablejsapi=1&autoplay=1&rel=0>

Can my windshield be repaired?

Do you have **3 or fewer damage spots**? Do the chips or cracks fit under a dollar bill? If you answered yes, we can most likely repair your glass.

Repair

Replace multiple & other glass >>



<http://www.youtube.com/embed/9xZLfRanAss?enablejsapi=1&autoplay=1&rel=0>

Can Safelite fix other glass damage?

Have glass damage somewhere else or multiple pieces of damage? **We can replace any piece of glass including rear and side windows.**

Fix my glass

[UB052368-69]; [UB042433-34] (box added for emphasis).

87. Prior to that articulation, the website falsely stated in text (to customers who indicated, in response to certain questions posed by Safelite, that they had a crack larger than the size of a dollar bill) that: "It sounds like we need to replace your windshield. This is because if the damage is too big . . . the structural integrity of the glass is damaged beyond repair."



Your work
What needs to be done?

It sounds like we need to replace your windshield.

This is because if the damage is too big, or if there are too many chips or cracks, the structural integrity of the glass is damaged beyond repair.

We'll protect your exterior and interior, then remove your old windshield. We'll apply a primer and a bonding glue to make a good seal and insert your new windshield. Then just wait around 1 HOUR for the glue to set and you can drive away.

How long will it take?

The work will take around 90-120 minutes.

- If you come to a store, you can choose when we start the work – within a 30-minute slot.
- If a technician comes to you, You can choose when we arrive – within a 4-hour slot.

Your vehicle will be safe to drive away about an hour after the work is finished.



[UB042435].

88. Each of these textual misrepresentations is literally false.

89. Moreover, because the internet and Safelite's website are key components of Safelite's organized campaign to turn repairs into unnecessary replacements, Safelite engaged a digital marketing company, Fathom, to script videos that Safelite then placed on its website and elsewhere on the internet. [SL0006322-30]; [SL0006358-66].

90. Documentation shows that Safelite posted videos on its website which contained false statements about the necessity of a windshield replacement when a repair was otherwise viable. *See, e.g.*, [SL0001442] (discussing scripting of "[w]eb videos [that] live within our conversion funnel on our website) and [SL0001624-56] (identifying website Sitemap Page Names where Safelite's videos regarding repair or replacement were embedded).

91. Fathom created multiple web videos (containing false statements) for Safelite, instructing when a windshield crack can be repaired or when a replacement is necessary. For example, the scripts for Safelite's web videos contain the following false statements:

- “If the chip or crack is larger than six inches (or bigger than the size of a dollar bill) it cannot be repaired[] so you’ll need a full windshield replacement.” [SL0006352-53];
- “If the damage spreads beyond the size of a dollar bill, a replacement will be necessary.” [SL0006327-38];
- “How do you know if your windshield can be repaired? The easiest way to tell is to hold a dollar bill against the chip or crack. If it covers the damage, it can usually be repaired.” [SL0006364];
- “[i]f the chip or crack is larger than six inches (or bigger than the size of a typical smart phone) it cannot be repaired so you’ll need a full replacement.” [SL0001443-44]; and
- “You’re probably wondering [if you get a windshield chip or crack], do I repair it or replace it with a whole new windshield? Is repair even an option? ... If the damage is small enough it can be repaired without removing the windshield. Repairable damage typically fits under a dollar bill.” [SL0001451-52].

92. In addition, at least one of the videos placed on Safelite’s website expressly states that “If the damage spreads beyond the size of a dollar bill a replacement will be necessary.” It also has an image that shows the outline of a dollar bill over a windshield. It says in text: “a replacement will be necessary” when the damage is bigger than a dollar bill.



[UB088614].

93. Safelite’s misrepresentations in both written text and in these videos on its website were viewable to individual consumers, who were deciding what they need to do to fix

the type of windshield damage they have suffered; and further, if they want to pay to fix the windshield damage independent of or in conjunction with their comprehensive insurance coverage.

94. Upon information and belief, these web videos were also distributed to many of Safelite's insurance company customers for viewing by their agents and policyholders. *See* [SL0008011-21].

2. YouTube Videos

95. Safelite also states the dollar bill rule in videos that Safelite characterizes as "Education videos" and places on other internet sites such as YouTube *See, e.g.*, [SL0001442-54]; (discussing "[e]ducation videos [that] live on YouTube and within paid search").

96. For example, one video posted to YouTube with over 300,000 views, "A Safelite AutoGlass® Windshield Repair," states, "If the damages spreads beyond the size of a dollar bill, a replacement will be necessary." <https://www.youtube.com/watch?v=Ev2MEoXmz2Q>. This video appears to be the same video Safelite maintained on its website.

3. Safelite Representatives' Uniform Oral Point of Sale Communications With Customers About the Dollar Bill Rule

97. As discussed above, Safelite's Call Center Service Representative's ("CSRs"), Repairing Associates, Technicians/Repair Specialists, Services Managers, Retention Specialists Area Sales Managers, District Managers, and Senior Level Executives are all instructed to follow the same "consistent" marketing/advertising message when communicating with customers and/or the third parties that serve them. The message is that only windshield cracks "up to six inches" or the size of a "dollar bill" can be repaired, and that when the crack is longer it is not safe to repair the windshield and/or "a replacement [is] the only option for insuring the structural

integrity of the windshield within the vehicle's overall safety features.” [SL0055880-906 at slide 20] (Emphasis in original).

98. The 6,000 Safelite repair technicians and 2,000 customer service representatives at Safelite “call centers” together constitute Safelite’s frontline salesforce to consumers. Safelite documents show that Safelite’s repair technicians and customer service representatives are required to routinely take on-line training courses that govern their sales interactions with customers. [SL0001131-32]; [SL0001133-69]. Among other things, as an instructed selling point for communication to individual customers at point-of-sale about what can or cannot be repaired, the training teaches as an affirmative statement of fact that the way for a customer to determine if a windshield is repairable or must be replaced is if the damage can be covered by the size of a dollar bill, and that any crack longer than that requires a windshield replacement.

99. For example, in October of 2008, Paul Syfko explained how “[a]ll the scripting for the call centers [continued to use] the dollar bill when determining a potential repair candidate.” [SL0005646-47]. Similarly, David Erwin’s online Repair Training course was revamped in August of 2009 in the form of a “new Call Center CSR repair training program,” which was also to be used for training repair specialists and replacement technicians in their sales interactions with customers (but now with a video being attached, entitled “Safelite Proper Repair”). As before 2007, the training continues to instruct that the “way to determine if the windshield is repairable is to ask if the damage can be covered by the size of a dollar bill”. [SL0001131-69].

100. This false commercial advertising message is systematically disseminated to millions of consumers as an affirmative, but literally false, statement of fact each year through

their interactions with front-line Safelite representatives. Safelite's goal is to influence customers' purchasing decisions about Safelite windshield replacement goods and services.

4. Safelite Repair Brochures

101. Safelite distributes hundreds of thousands of repair brochures annually to individual consumers and to insurance agents, commercial vehicle fleet accounts, and third parties like the 50 million member AAA, who in turn send them to their individual clients/customers. The brochures prominently feature the dollar bill rule and/or falsely state that if a windshield crack is longer than six inches the windshield must be replaced. These brochures also refer the reader to Safelite's website where Safelite makes the same literally false statements discussed above.

102. For example, below is the front and back of a standard Safelite repair brochure sent to consumers and commercial clients, like Penske Corp, which has a fleet of tens of thousands of vehicles. The brochure was to be used by individual drivers to determine whether a windshield crack can be safely repaired or if the windshield must be replaced. The brochure features a ruler measuring six inches and states: "Windshield damaged? It may be repairable. Use this guide to help decide." Safelite then falsely states "Damage to a windshield doesn't always mean the windshield needs to be replaced. . . . many windshield chips and cracks up to the length of a dollar bill can be successfully repaired. (Emphasis added).

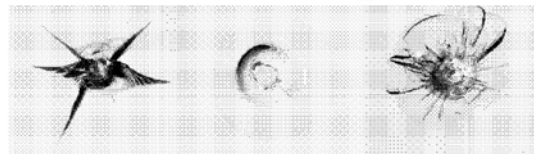
Windshield damaged?



**It may be repairable.
Use this guide to help decide.**

Damage to a windshield doesn't always mean the windshield needs to be replaced. If addressed promptly, many windshield chips and even small cracks up to the length of a dollar bill can be successfully repaired.

Common windshield damage



Star

Bull's eye

Combo



Is the damage repairable?

Just use our convenient, six-inch ruler on the right to measure the length of the damage before calling.

Safelite® 24/7 Commercial Vehicle Customer Service Center:

safeliteservice.com

888-800-4527

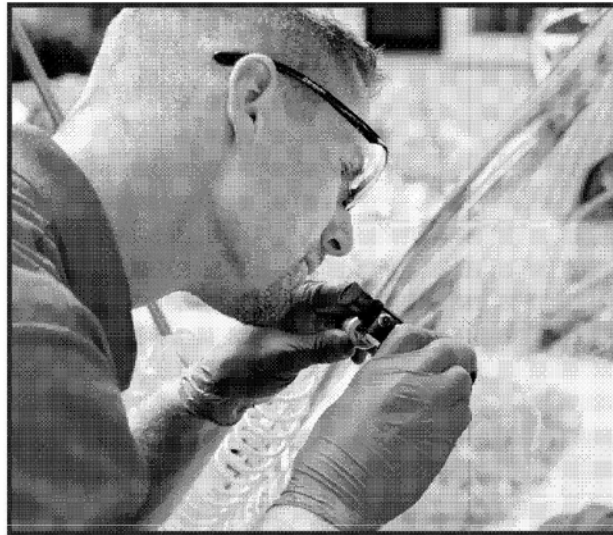
Safelite
AutoGlass



SL0009104

Benefits of a Safelite® repair:

- Cost-effective
- Restores windshield's structural integrity & almost always prevents damage from spreading
- Environmentally friendly
- Stronger & longer-lasting windshield repairs with our exclusive GlassHealer™ solution
- Only takes about 30 minutes with instant safe drive-away time
- Comes with the industry's only nationwide lifetime guarantee



To schedule service, call Safelite® 24/7 commercial vehicle customer service center. Have the following information available:

- Vehicle's year, make & model
- Safelite commercial account number:
- For mobile service, address of desired service location
- Piece of glass that's damaged (windshield, back glass, side glass, other)
- Length of damage using the repair ruler found on the other side (applies to windshields only)



SL0009105

[SL0009104-05].

103. Another example, is the Safelite brochure entitled “**Improving your view: ‘How to Perform a Proper Repair’**,” which states in relevant part:

What is repairable?

Did you know that most windshield chips or cracks up to the size of a dollar bill (6 inches) can be repaired? Most certified repair specialists can repair chips, nicks, or cracks up to 6 inches long.

* * *

Some things a reputable vehicle glass company should not do during the repair process

- Insist on windshield replacement when repair is a safe, effective solution

(Emphasis in original)

104. The front and back of this brochure which Safelite distributed to, *inter alia*, the AAA (which has 50 million members) and many insurance companies is shown below:



Trust America's vehicle glass experts

Improving your view: "How to Perform a Proper Repair"

What is repairable?

Did you know that most windshield chips or cracks up to the size of a dollar bill (6 inches) can be repaired? Most certified repair specialists can repair chips, nicks and cracks up to 6 inches long. A quality windshield repair will restore the structural integrity of the windshield, help prevent the damage from spreading, and make the blemish much less noticeable, without removing and replacing the glass.



A highly trained technician from Safelite AutoGlass technician uses industry-leading, proprietary equipment to perform a safe and effective windshield repair.

Windshield repair benefits

- **It's affordable.** If a policyholder has comprehensive coverage, and if he or she chooses to have his or her windshield repaired rather than replaced, most insurance companies will waive the deductible, leaving no costs for policyholder. Windshield repair also helps an agency's loss ratio.
- **It's safe and effective.** A quality windshield repair can restore the structural integrity of the windshield – one of the most important structural reinforcement components of your vehicle in the event of a crash or rollover.
- **It's convenient and fast.** The windshield repair itself usually only takes about 30 minutes. Plus, policyholders can choose mobile service for their convenience.
- **It's environmentally friendly.** Since the windshield is not removed nor disposed of during a windshield repair, the process is environmentally friendly and eliminates potential waste.
- **It's guaranteed.** All Safelite AutoGlass windshield repairs are backed by a national warranty and are guaranteed to pass lease turn-back and state vehicle inspections. If, for any reason, a policyholder is dissatisfied with a program repair, the cost of the repair will be applied toward a replacement. (A glass deductible may apply.)

The windshield repair process

Using industry-leading materials, a highly trained specialist will repair your windshield damage and prevent it from spreading. Here are the major steps the repair specialists at Safelite AutoGlass – America's leading vehicle glass repair and replacement team – follow during the windshield repair process:

1. Protective drapes are put in place to prevent damage to the vehicle body. The windshield damage is then inspected.
2. To help ensure a quality repair, the crack or chip is thoroughly cleaned of debris and moisture.
3. The resin that fills and seals the damaged area is applied using an injector on the exclusive Glass Medic repair system.
4. Mylar is placed over the liquid resin to seal the damage and create a flat surface cure.
5. A high-power ultra violet light is used to cure (harden) the resin.
6. Next, the Mylar is removed, the excess resin is scraped off, and the repaired windshield is polished.

Some things a reputable vehicle glass company should do during the repair process

- Employ only professional, certified, background-checked, drug-tested and uniformed technicians
- Greet customers warmly and professionally
- Help customers determine if a windshield is repairable
- Explain windshield repair process and set customer expectations (The customer should understand that while there will be a cosmetic improvement, a slight blemish or watermark is completely normal and should be expected.)
- Protective both technician and customer's vehicle to prevent vehicle body damage
- Apply minimal pressure to cracks
- Clean glass thoroughly inside and out after repair completion
- Offer customer final inspection and signoff

Some things a reputable vehicle glass company should not do during the repair process

- Insist on windshield replacement when repair is a safe, effective solutions
- Drill or probe repairable damage
- Use aggressive sales tactics to force a potential customer into having his or her vehicle glass serviced



A Safelite AutoGlass technician greets a customer warmly and thoroughly explains the windshield repair process prior to servicing the customer's vehicle.

Safelite AutoGlass | 800-800-ASAP (2727) | safelite.com

ATTORNEYS' EYES ONLY - HIGHLY CONFIDENTIAL

SL0008023

[SL0008022-23].

105. Safelite's statements that the cutoff for repair of windshield cracks is the size of a dollar bill or six inches, and that any longer crack will require that the windshield be replaced for the safety of the consumer, are literally false. In fact, Safelite knows that cracks much longer than six inches can be safely repaired. It knows, contrary to its own public statements, that it is safer and less expensive to repair windshields with cracks longer than six inches than to replace them.

5. **Brochures and "Training" Bulletins Created by Safelite That Deceptively Identify The Insurance Company, Not Safelite, And State The "Dollar Bill" Rule As A Universal Standard For Safe Windshield Repair**

106. Safelite's organized campaign to convince people to replace windshields that are repairable includes crafting brochures with the "dollar bill" or six inch" rule for informative distribution to insurance agents and consumers. These materials deceptively use the names of the insurance companies that Safelite has contracts with -- as if *the insurance company* i.e. not Safelite was making the statement that six inches was the cutoff for safe windshield crack repairs.

107. For example, below is a standard brochure that Safelite created for Farm Bureau Insurance of Idaho ("IDFB") with the dollar bill rule being the outer limit of repair. Their brochure makes no mention of Safelite. Safelite's internal documents reflect that Safelite sent IDFB tens of thousands of these brochures as late as 2012.

ATTORNEYS' EYES ONLY - HIGHLY CONFIDENTIAL

Handling vehicle glass damage




Windshield Damage

With Farm Bureau Insurance of Idaho, it could not be easier. All you need to do is call, 888-432-4527 and friendly representatives will assist you with filing a claim. IDFB Glass service features benefits, like:

- Save time by making one call only
- Report your claim 24/7/365
- Schedule mobile service at a time and place that's convenient for you
- Select from many quality, Farm Bureau-approved auto glass providers
- Protect your private information by using a trusted source for glass claim service

Your Solution — **24-Hour Claim Hotline: 888-432-4527**

ATTORNEYS' EYES ONLY - HIGHLY CONFIDENTIAL

Did you know some windshields can be repaired?

That's right. If your windshield has a chip or crack that's smaller than a dollar bill (six inches), we can probably repair it instead of completely replacing it. Windshield repair is a quick, safe, cost-effective alternative to windshield replacement.

Just use our convenient, six inch ruler (see below) to measure the length of the damage before calling. Don't have damage now? Store this document in your glove compartment in case you ever have damage.

24-Hour Claim Hotline: 888-432-4527



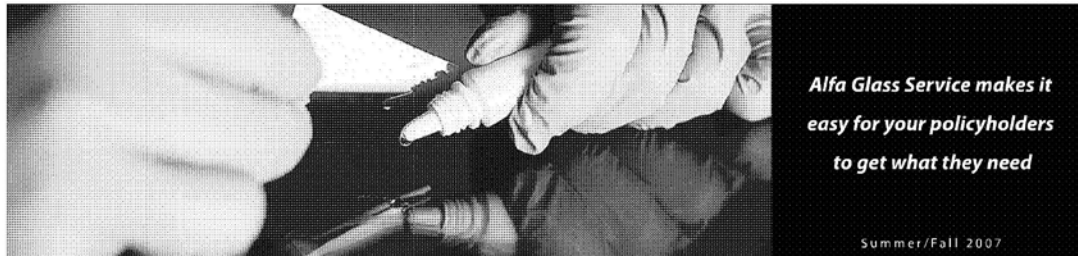
[SL0084917-18].

108. Safelite also drafts and sends tens of thousands of “bulletins” to insurance agents under the guise of being drafted by the insurance agent’s company, not Safelite, such as bulletins for Progressive Insurance, Alfa Insurance and Erie Insurance. In each of these “bulletins,” Safelite has the insurance company -- i.e. not Safelite -- repeat the “dollar bill” rule as the upper limit for safe windshield repair after which a windshield replacement will be required.

109. For example, as shown below, Safelite created a bulletin for Alfa Insurance (that does not even mention Safelite) stating, *inter alia*, “Did you know that a certified repair

specialist can successfully repair cracks up to six inches long. (Think of the size of a dollar bill.)

A trained Alfa Glass representative will offer your policyholder repair as a viable option for any break that falls within that size limit.”



The benefits of Windshield Repair... there's a lot to tell!

Small chips and dings in a windshield don't have to add up to a big expense or headache for your policyholders. Here are some benefits of repair that everyone should know:

Forget low cost...Windshield Repair means no cost!

- If an Alfa Glass representative determines that the damage has potential to be repaired, and the repair attempt is successful, your policyholder's deductible will be waived, so for the policyholder it's free!

***Windshield Repair is good on more than small chips and dings....
cracks can be fixed too!***

- Did you know that a certified repair specialist can successfully repair cracks up to six inches long. (Think of the size of a dollar bill.) A trained Alfa Glass representative will offer your policyholder repair as a viable option for any break that falls within that size limit. When requested, the representative will then assist the policyholder in finding a shop with the special equipment and expertise needed to perform the work.

Windshield Repair is safe and effective!

- A quality windshield repair, performed by a certified specialist, will restore the structural integrity of the windshield and almost always prevents the damage from spreading. In addition, having a quality repair will make the blemish much less noticeable. Often, it practically disappears. Be assured that your policyholder will always be the one who makes the final decision concerning the success or failure of any repair attempt.

Windshield Repairs are both convenient and appreciated!

- Most often, the repair process takes less than 30 minutes. Many policyholders simply like the idea of not having to replace the windshield as they often have concerns about the potential for leaks. Successful repairs avoid the necessity of breaking the factory seal during the replacement process.

Windshield Repair Guarantee!

- If for any reason at any time, as long as they own the vehicle, your policyholder decides they do not like the repair and would prefer a windshield replacement, the cost of the replacement less any deductible will then be billed to Alfa on the original claim number and the cost of the original repair will be credited back to Alfa.

REPAIR RATIOS

Alabama	32.4%
Georgia	37.7%
Mississippi	65.0%
Total Program	33.8%

CUSTOMER SATISFACTION

98.5%

*Program totals through
August, 2007*



Alfa Glass Service 24-Hour Reporting Hotline: 1-800-782-5352

SL0000227

[SL0000227].

110. Similarly, the ErieGlass Bulletin drafted by Safelite states that it is to “**Help educate policyholders on the benefits of windshield repair,**” and that “Safelite AutoGlass has raised windshield repair awareness through national advertising” and repeats the false “dollar bill rule.” (Emphasis in original). Specifically, as shown below, the ErieGlass Bulletin states, *inter alia*, that “small cracks (up to the size of a dollar bill) can be repaired rather than replaced when quick action is taken before the damage spreads.”



**ERIEGlass Bulletin:
The policyholder
awareness edition**

Winter/Spring 2010

Help educate policyholders on the benefits of windshield repair

Some windshield chips and even small cracks (up to the size of a dollar bill) can be repaired rather than replaced when quick action is taken before the damage spreads.

- Research conducted shows that on average 50% of small chips "crack out" within a year, 80% within two years and 90% within three years.
- Both cold and hot weather can make small chips spread quickly, so by repairing chips as soon as they occur, we are helping eliminate the need for replacements in the future.
- Successful repairs are performed by shops committed to repairing vs. replacing.
- Safelite AutoGlass has raised windshield repair awareness through national advertising. It will continue to do so in 2010, helping make policyholders aware of repair benefits, including: saving policyholders money (windshield repair is available at no cost to most policyholders with comprehensive coverage); maintaining the windshield's seal; and preventing a windshield from entering a landfill.



Program results for 2009

REPAIR RATIOS
(Repair Ratio = # of windshield repairs divided by # of windshield repairs plus # of windshield replacements)

Safelite Stores	45.2%
Affiliate Stores	30.6%
Non-Program Stores	26.0%

AVERAGE CLAIM COSTS

Safelite Stores	\$233
Affiliate Stores	\$317
Non-Program Stores	\$330

WINDSHIELD REPAIR ADVERTISING: Safelite AutoGlass increased repair ratios across the industry in 2009 through advertising. It plans to continue advertising this year to improve awareness.

Help make policyholders aware of some questionable glass marketing tactics

Some vehicle glass repair and replacement companies use extremely aggressive sales tactics with insureds. These companies hire people who approach consumers in a pushy manner at car washes, oil change facilities and gas stations, offering to repair or replace their windshield "for free." Some even offer flashy incentives like free groceries or free gas. They pressure policyholders to give them their insurance information and promise they'll "take care of everything."

Some companies are even hiring commissioned sales people to go door-to-door. These roaming sales associates have little – if any – training to determine what is repairable or replaceable damage ... let alone what is an occurrence covered by insurance, or excluded as accumulated wear and tear. Plus, insureds may never be able to reach these companies again if they perform sub-par or unsafe services. ERIE's experience has been that some policyholders have not even been aware they were filing an insurance claim when providing their information.

These unscrupulous tactics are on the rise. For the safety of your policyholders and their precious cargo, it is important that they choose a reputable vehicle glass service provider that does not pressure customers to file a claim. Making policyholders more knowledgeable and more aware of some of these emerging, aggressive practices can also help solidify your relationships with policyholders by helping improve satisfaction and retention.

ERIEGlass 24-Hour Reporting Hotline: 800-552-3743

CONFIDENTIAL

SL0008035

[SL0008030-35].

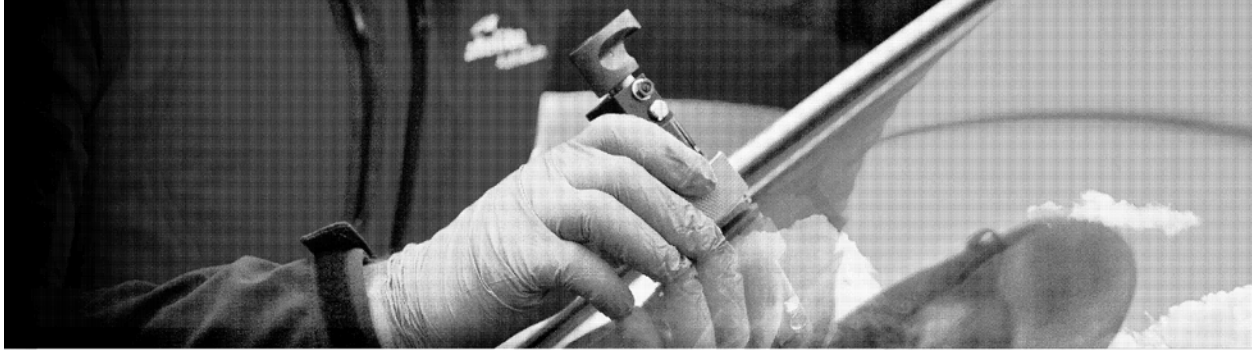
111. Safelite's bulletin for Progressive Insurance's agents is headed "**What you and your policyholders should know about windshield repair.**" (Emphasis in original). But, like the Alfa Insurance bulletin, it does not mention Safelite *as the drafter* of the marketing content. The bulletin states "damage to the windshield doesn't always mean the windshield needs to be

replaced. If addressed quickly, many windshield chips and even small cracks up to the length of a dollar bill can be successfully repaired.”

112. A September 2015 Safelite email from, Jim McMillan, Safelite’s Vice President of Client Sales and Support, to Progressive Insurance executives states that Safelite’s Area Sales Managers (“ASM”) would use this bulletin (shown below) as the “‘script’ they should follow during their visit” with over 5,300 agent offices for “value-added training” regarding windshield repair.” In connection with this “training” effort for Progressive Insurance agents, McMillan led a “[n]ational conference call . . . with all [Area Sales Managers and] District Managers to make sure they clearly understand the subject matter of the bulletin and how it should/should not be presented to Progressive agents by their ASMs.” [SL0082623-27]; [SL0080960-62].

PROGRESSIVE[®] GLASS BULLETIN

24/7 auto glass appointment scheduling
1-800-274-4499 progressiveagent.com



What you and your policyholders should know about windshield repair

Key benefits of windshield repair

Damage to the windshield doesn't always mean the windshield needs to be replaced. If addressed quickly, many windshield chips and even small cracks up to the length of a dollar bill can be successfully repaired.

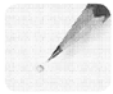
When performed by a certified technician, windshield repair has many benefits, including:

- Restores windshield's structural integrity
- Almost always prevents damage from spreading
- Only takes about 30 minutes with instant safe drive-away time (Urethane-based adhesives used to install a new windshield require time to fully cure.)
- Fully covered by Progressive with comprehensive coverage
- Environmentally friendly

Because the glass layers in windshields are now thinner, most chips eventually crack. Both cold and hot weather can make small chips spread quickly, so repairing chips as soon as they occur helps to eliminate the need for replacements in the future.

One preferred Progressive Glass Service shop, Safelite AutoGlass[®], uses exclusive materials and methods to make stronger repairs that are guaranteed nationwide.

Questionable service tactics by "windshield bullies"



Some vehicle glass repair and replacement companies use extremely aggressive sales tactics to pressure people to agree to unnecessary repairs. These companies hire people who approach consumers in a pushy manner at car washes, oil change facilities and gas stations, offering to repair or replace their windshield "for free."

Some damage, such as the "pit" pictured above, is only cosmetic and does not require repair, but is frequently pointed out by windshield bullies as needing to be repaired.

These bullies pressure policyholders to give them their insurance information and promise they'll "take care of everything." Frequently, policyholders have not even been aware they were filing an insurance claim when providing information.

For the safety of your policyholders and their precious cargo, it is important that they choose a reputable vehicle glass service provider that does not pressure customers. Making policyholders more knowledgeable and more aware of some of these aggressive practices and what damage is repairable can also help solidify your relationship with policyholders by helping improve satisfaction and retention.

When a policyholder calls your agency with a glass claim, Progressive strongly encourages you to simply refer them to the Progressive Glass Service at progressiveagent.com or 1-800-274-4499 where they can make an informed decision about their choice of shops. Policyholder shop preference is always honored.

Progressive Glass Service

2014 shop repair %

(This refers to the percentage of windshields that are repaired rather than replaced.)

Total:

Safelite [®] shops	40.3%
Network shops	34.9%

Program total	38.8%
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The glass is always greener on the Safelite side

In 2014, Safelite AutoGlass – a preferred provider for Progressive – **recycled more than 50,000 Progressive windshields**, preventing more than 900 tons of windshields from entering landfills.



ATTORNEYS' EYES ONLY - HIGHLY CONFIDENTIAL

SL0080962

[SL0080962].

113. The bulletin also refers the Progressive insurance agents and/or policyholders to a website link that is the insurance company's website, and the website contains the same misleading content as in the bulletin -- that only windshield cracks up to six inches might be repairable. *See* <https://www.progressive.com/claims/glass-repair/>. Additionally, Safelite provided insurance companies and other third parties like AAA for placement on their websites the repair/replacement videos and text with their misleading content that only damage that can be covered by a dollar bill is repairable. *See* [SL0000340]; [SL0008011-21].

6. Safelite's Additional Educational Materials For Insurance Companies and Their Agents

114. In addition to "training" bulletins discussed above, Safelite also developed PowerPoint presentations for insurance companies and their staff such as its "Windshield Repair: Continuing Education Course For Property and Casualty Insurance Agents and Staff." The presentation states unequivocally that only "Cracks 6" or less can be repaired." [SL0005374-415]; [SL0007935-78] (emphasis added).

115. Similarly, Safelite has another PowerPoint Presentation entitled "Agent Continuing Education Course: Controlling Vehicle Glass Losses" which repeats the "dollar bill" rule as the cutoff for repair, and also embeds the false and misleading Safelite videos regarding repair and replacement discussed above. Notably, this presentation purports to educate insurance agents generally about windshield repair and replacement and the VGRR industry as an objective presentation of facts i.e. the facts discussed therein are not specific to Safelite. This format misleadingly gives these false statements an appearance of objectivity. Safelite refers internally to the format as "de-branding." [SL0008139-203]; [SL0008288-353].

116. Another example is a PowerPoint presentation Safelite created in 2017 for Progressive Insurance agents with slides instructing: “**Repair Disqualifiers Replacement Recommended** [-] Damages/crack larger than a dollar bill”; and “**Questions to Consider Asking Policyholder** [-] Can the overall damage be covered with a dollar bill?” (Emphasis in original). [SL0080736-59].

7. Press Releases & TV/Radio Interviews

117. Safelite’s organized campaign to spread its dollar bill message as a blanket rule also extends to news releases, guest columns, and radio interviews.

118. For example, in early 2009, Safelite was losing market share to competitors that were offering deep discounts and/or financial incentives. To counter this loss of market share, Safelite published advertisements questioning their competitors’ business practices such as “Don’t risk your safety for a few free dinners”; and “How much will a free windshield really cost you?” -- which falsely stated, *inter alia*, “The good news is that most chips or cracks smaller than the size of a dollar bill can be repaired.” [SL0009721-31]. Safelite coupled these ads with radio ads directing consumers to Safelite’s website.

119. For example, a 2010 “Guest Column” by Safelite’s Government & Auction Coordinator in a publication entitled “Police Fleet Manager” discussing the benefits of windshield repair, *inter alia*, states unequivocally: “Luckily, if the crack is less than 6 inches, it can be repaired.” [SL0009177-78].

120. Similarly, Safelite issued a news release on July 11, 2011 touting its new windshield repair resin. The release quotes Tom Feeny, president and CEO of Safelite, stating “Drivers need to know most chips and cracks up to six inches can be repaired -- a service that has many benefits including preserving the windshield’s structural integrity & factory seal.” [SL0006033].

121. Safelite also takes advantage of opportunities where its employees are interviewed on a radio or TV shows – one of the key components of Safelite’s marketing strategy to communicate its “dollar bill” rule. For example, consistent with the “Messaging Triangle” discussed above, when a Safelite executive was asked to appear on a radio show to discuss repairs in 2013 he was provided with Safelite’s “messaging on the advantages of repairs.” This messaging took the form of Safelite’s “Message Triangle,” which states: “Usually, a chip or crack less than six inches (smaller than the size of a dollar bill) can quickly be repaired” as discussed above. [SL0000067-69]; *See also* [SL0007583-89] (TV show “Talking Points When a chip is smaller than a dollar bill, it can usually be repaired without replacing the windshield”).

F. Safelite Has Caused Ultra Bond Significant Damage Due To Its False Statements That Windshield Cracks Longer Than Six Inches Cannot Be Safely Repaired Under Any Circumstances

122. Ultra Bond sells repair kits, resins, primers, additives and pre-treatment chemicals and tools necessary to repair windshield cracks longer than six inches using the multi-viscosity method. Additionally, Ultra Bond sells refills of the resins that function best with its system of repair.

123. Also, while the multi-viscosity method patent expired in 2012, Ultra Bond and Ultra Bond Licensing continues to “license” the “know how” required for properly utilizing the multi-viscosity method of repairing windshields, which requires instruction for proper performance.

124. As previously alleged, the benefits of repairing windshield cracks longer than six inches up to 14 inches (consistent with the ROLAGS), as opposed to windshield replacement, are significant to the consuming public, both in terms of safety and cost.

125. However, despite the early success of the Ultra Bond system for repairing windshield cracks longer than six inches when first introduced, Plaintiffs' subsequent sales and licenses to VGRR shops and related businesses in the United States have been significantly hampered.

126. The cause of Plaintiffs' low sales and reduced licenses is not the performance of the Ultra Bond system; rather, it is the material false statements and misrepresentations made by Safelite to individual consumers and businesses that serve consumers, that only cracks "up to six inches" and/or the size of a "dollar bill" can be repaired, and that it is unsafe to repair windshield cracks longer than six inches. If consumers and the entities that serve them were not told the above false statements they would seek out shops that perform Long Crack repair and, in turn, VGRR shops and related businesses would purchase or license Plaintiffs' products in order to be able to offer this service.

127. Safelite uses its dominant position in the VGRR market to convey the false message that the "six inch" or "dollar bill" rule is an accepted standard for safe windshield repairs. Upon information and belief, if Safelite did not convey this false message, over 90% of individual consumers would choose to perform cheaper and safer Long Crack repair rather than more expensive and more dangerous windshield replacement. Nevertheless, despite clear industry guidelines in place since 2007, and Safelite's own internal knowledge that windshield cracks far longer than six inches can safely be repaired, Safelite falsely states that windshield cracks longer than six inches cannot be repaired. It does this for its own financial benefit and to the detriment and harm of consumers, both in terms of cost and safety.

128. Because informed consumers would choose to repair windshield cracks longer than six inches if Safelite did not engage in making its literally false statements of fact,

automotive shops and related businesses *would have to* purchase a system capable of performing satisfactory repairs of windshield cracks longer than six inches and up to at least 14 inches in length (i.e. consistent with the ROLAGS) to meet increased consumer demand. Otherwise, they would risk losing out on increased windshield repair business. This increased customer demand for, and satisfaction with, Long Crack repair would have resulted in more sales (and profits) for Plaintiffs were it not for the deceptive conduct of Safelite.

129. In addition to lost profits due to Ultra Bond's inability to sell its original Long Crack repair system, Plaintiffs have not been able to develop, market or license a more advanced system for Long Crack repair for which Richard Campfield obtained a patent in September of 2012.

130. The Ultra Bond repair system as originally patented utilized an acrylate-hybrid UV "radical" cure. However, as described above, in September of 2012, Ultra Bond obtained the 2012 Patent, which is a method of using UV cationic epoxy to repair cracks and breaks in windshields. The UV cationic epoxy method under the 2012 Patent is even easier to use. It eliminates oxygen inhibition, shrinkage and dark cures after any exposure to UV. In addition, once cured, UV cationic offers extreme clarity and greater temperature and moisture resistance. *See Exhibit B.* The 2012 Patent represents yet another breakthrough in the technology of Long Crack repairs.

131. However, because of the lost profits and destruction of the Long Crack repair market via Safelite's false statements of fact in its advertising and marketing materials, Ultra Bond has been unable to bring this more advanced technology to market. This has again resulted in further lost profits.

132. In sum, Safelite's material misrepresentations about the dollar bill or six inch rules have directly caused Plaintiffs significant lost profits by severely weakening the market that would otherwise exist for Ultra Bond's products and services.

133. Plaintiffs have not sat by idly without protest while Safelite has engaged in its false advertising campaign, stating: (i) that a windshield always requires a replacement when a crack is longer than six inches; and/or (ii) that only windshield cracks up to six inches can be repaired. Rather, Plaintiffs (who have not previously been in an economic position to pursue litigation) have tried to turn to alternative means of protest to government officials and directly to Safelite to stop the false advertising.

134. These protest include (but are not limited to) the following:

- A letter sent by Campfield on April 12, 2010 to the CEO of Safelite (Thomas Feeney) addressing among other issues the six inch rule and requesting any evidence that would support it ([UB050404]);
- Correspondence directed by Campfield over a course of years (as President and Vice President of the National Windshield Repair Association) to the Attorney Generals of all 50 states, the Colorado Insurance Commissioner, the New Jersey Divisions of Criminal Justice Office of the Insurance Fraud Prosecutor discussing inter alia "adjusting criteria and repairable damage" and highlighting the falsity of the "dollar bill" adjusting criteria (*see, e.g.*, [UB062418-21]);
- Correspondence, in July 2013, directed to Farmers Insurance concerning adherence to the ROLAGS repair criteria. ([UB075635-36]);

135. Moreover, nothing done by Plaintiffs has induced Safelite into refraining from taking corrective action to stop dissemination of its false representations. Rather, Safelite has continued to create and promulgate new false advertisements, stating: i) that a windshield always requires a replacement when a crack is longer than six inches; and/or (ii) that only windshield cracks up to six inches can be repaired.

V. CLAIM FOR RELIEF

A. Violations of Section 43(a) of the Lanham Act

136. Plaintiffs repeat and re-allege all allegations contained in the preceding paragraphs, as though fully set forth herein.

137. Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B) prohibits, *inter alia*, any “false or misleading description of fact, or false or misleading representation of fact, which . . . in commercial advertising or promotion, misrepresents the nature characteristics, [or] qualities . . . of . . . goods, services, or commercial activities.”

138. As described above, Defendants advertise and/or promote their windshield repair and replacement services in interstate commerce, *inter alia*: (i) on the worldwide web; (ii) through multiple non-internet based media outlets such as print and radio; and, (iii) through Safelite’s customer service representatives and repair technicians who interact directly with customers in person and in recorded phone calls; and (iv) through insurance companies and their thousands of agents and staff who also deal directly with millions of policyholders/consumers.

139. As described above, Defendants knowingly and falsely state that windshield cracks longer than six inches cannot be repaired and require that the windshield be replaced or, conversely, that only windshield cracks up to six inches (or the size of a dollar bill) can be safely repaired.

140. Defendants made (and continue to make) these knowing literally false statements with the intention of inducing consumers enter into a windshield replacement transaction when their windshield crack is longer than six inches. As such, Defendants have damaged Plaintiffs’ Long Crack repair services.

141. Safelite's false statements are material because, *inter alia*, windshields repairs are both safer and cheaper for the consumer than a windshield replacement.

142. Defendants have full knowledge of the ROLAGS Standard for repair of Long Cracks -- as well as their own internal conclusions that windshield cracks far longer than six inches can be safely repaired -- but they knowingly choose to misrepresent the length of windshield cracks that can be safely repaired to the public. This is done to mislead unwitting consumers to purchase higher priced, less safe windshield replacements. Defendants benefit financially from performing as many windshield replacements as possible rather than repairs.

143. Defendants' literally false statements have deceived, and continue to deceive, a substantial segment of the buying public. Safelite's misrepresentations that cracks over six inches are not repairable harm the public because Safelite's VGRR business replaces approximately 3 million windshields a year, and absent Safelite's misrepresentations, many of these replacements would result in cheaper and safer repairs.

144. Upon information and belief, many of the windshields replaced by Safelite could, in fact, have been repaired if Safelite not misrepresented that only windshield cracks "up to six inches" long can be repaired and that it is unsafe to repair cracks that are longer. Data tabulated by Ultra Bond, from its own business records, suggests that an artificial, bright-line six inch rule has resulted in a situation where 80-90% of total replacements could, in fact, have been repaired had the market for Long Crack repair not been suppressed and negatively impacted by Safelite's false statements. For example, Ultra Bond's repair and replacement business in Grand Junction, Colorado markets and advertises both crack repair and replacement and tells every consumer the truth on their options to repair or replace, resulting in an 80-90% crack repair versus replacement ratio.

145. Section 35 of the Lanham Act entitles a plaintiff, “subject to the principles of equity,” to recover (1) the defendant’s profits from the false advertising, (2) any damages sustained by the plaintiff, and (3) the costs of the action. In addition, Section 35 permits a court to award up to three times the amount of actual damages, and to adjust an award of the defendant’s profits as the court sees fit according to the circumstances of the case. 15 U.S.C.A. § 1117.

146. Plaintiffs have suffered injury in the form of lost business opportunities directly caused by Safelite’s false statements, which have wiped out a large portion (if not most) of the market for Ultra Bond’s products and services.

147. Absent Safelite’s false statements, Ultra Bond, Inc. (and Ultra Bond Licensing) would have sold millions of dollars of tools, resins, licenses, and consulting services related to Long Crack repair. In addition, Ultra Bond Windshield Repair and Replacement in Grand Junction, Colorado and throughout Northeastern Pennsylvania would have been able to repair many of the windshields with Long Cracks that Safelite unfairly and deceptively caused its customers to replace their windshields.

148. Defendants’ misconduct has also caused Plaintiffs to delay marketing and selling the improved Long Crack repair method patented under the 2012 UV Epoxy Patent. As a result, Plaintiffs have suffered and will continue to suffer substantial lost profits associated with the delay in marketing and selling Ultra Bond’s products and services associated with that proprietary process.

149. Plaintiffs demand the amount of actual damages they have sustained, together with (if successful), the costs of this action together with reasonable attorney fees as determined by the Court.

150. In addition, because Safelite has wrongly benefited from its deceptive practices and knowing false statements by, *inter alia*, unfairly inducing individual and commercial customers to unnecessarily pay for more expensive and less safe windshield replacements at its VGRR shops, Plaintiffs demand damages in the form disgorgement of these ill-gotten gains.

151. Lastly, Plaintiffs request that the Court impose an injunction requiring Safelite to desist from continuing to make false representations that windshield cracks longer than six inches cannot be repaired, and to issue corrective disclosures, consistent with the ROLAGS, to individual consumers and the businesses that serve them concerning windshield repairs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, respectfully request that judgment be entered in their favor and against Defendants as follows:

- A. Enter judgments against each of the Defendants and in favor of Plaintiffs predicated on Defendants' violations of the Lanham Act on all claims as alleged herein;
- B. Enter an Order:
 - a. Permanently enjoining Defendants from disseminating or causing the dissemination of any oral or written statements, expressly or by implication, stating that only windshield cracks up to six inches long can be safely repaired and/or that windshield cracks longer than six inches require that the windshield be replaced rather than repaired.
 - b. Requiring Defendants to disseminate corrective advertising for the misrepresentations in (a) above in a manner to be determined.
- C. Enter an Order awarding Plaintiffs the ill-gotten profits Defendants derived from their wrongful acts as complained of herein, as allowed by the Lanham Act;

D. Enter an Order awarding Plaintiffs all damages sustained by them, including Plaintiffs' lost profits, reasonable attorney's fees, other costs of this suit, and prejudgment and post-judgment interest, as allowed by law; and

E. Enter an Order awarding such further and additional relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs, on behalf of themselves demand a trial by jury on all issues so triable.

Respectfully submitted,

s/ *Drew Legando*

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